UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Civil No. 6-71125

JAMES C. CHUMBLEY, and JIM CHUMBLEY CHEVROLET, INC., a Delaware corporation, *Plaintiffs,*

v.

GENERAL MOTORS CORPORATION, a Delaware corporation, and GENERAL MOTORS ACCEPTANCE CORPORATION, a New York corporation, *Defendants.*

MEMORANDUM AND ORDER

Plaintiffs, James C. Chumbley (Chumbley) and Jim Chumbley Chevrolet, Inc. (Chumbley Chevrolet), have brought this action against defendants General Motors Corporation (GMC) and General Motors Acceptance Corporation (GMAC) alleging that both defendants violated the New Car Dealer's Day in Court Act, (Dealer's Act), 15 U.S.C. § 1221, *et seq.*, Sections 1 and 2 of the Sherman Antitrust Act, 15 U.S.C. §§ 1, 2, Section 7 of the Clayton Act, 15 U.S.C. § 18, the Civil Rights Act, 42 U.S.C. § 1982, and the Michigan Corporations Statute, MCLA § 450.1541.

Plaintiffs' complaint alleges that Chumbley entered into an agreement with GMC's Motors Holding Division (MHD) to finance the capital structure of his franchised dealership, Chumbley Chevrolet. In exchange for contributions to the capital account, Chumbley received non-voting stock and MHD received all the voting stock. It is further alleged that Chumbley could eventually buy out MHD's interest in Chumbley Chevrolet. GMAC provided financing for the Chumbley Chevrolet floor plan. Plaintiffs allege that during 1974 and 1975, the defendants wrongfully forced them to terminate their franchise and sell the dealership assets to another individual at great loss to plaintiffs.

Plaintiffs further alleged that these actions were racially motivated in that defendants insisted on plaintiffs selling their assets to a black person.

Defendant GMAC moves to dismiss Count I which alleges a cause of action under the Dealer's Act on the ground that plaintiff Chumbley is not a dealer and that GMAC is not a manufacturer within the meaning of the statute. Plaintiff Chumbley alleges, however, that by the terms of the franchise agreement he is made essential to the operation of the dealership and that he is the sole beneficial shareholder in the corporation. It is therefore clear that plaintiff Chumbley has alleged that he is a dealer within the meaning of 15 U.S.C. § 1221(c). *York Chrysler-Plymouth Inc.* v. *Chrysler Credit Corp.*, 447 F.2d 786 (5th Cir. 1971); *Kavanaugh* v. *Ford Motor Co.*, 353 F.2d 710 (7th Cir. 1965). Whether GMAC is a manufacturer presents an issue of apparent first impression. 15 U.S.C. § 1221(c) defines manufacturer in pertinent part as any corporation "which acts for and is under the control of such manufacturer or assembler in connection with the distribution of said automotive vehicles." It is undisputed that GMC is a manufacturer of automobiles and that GMAC is a wholly owned subsidiary of GMC.

Defendant GMAC contends that the legislative history of the Act supports its position that it is not a manufacturer. Specifically, GMAC points to a bill introduced by Congressman Multer in the 84th Congress which enacted 15 U.S.C. § 1221 which would have specifically included individuals financing motor vehicles intended for resale. Defendant infers from Congress' rejection of this language an intent not to include those who provide financing within the coverage of the act. Plaintiffs counter that the act has a remedial purpose and that to give full effect to that purpose GMAC must be covered. Plaintiffs argue that Congress' rejection of the Multer provision merely indicates a desire to protect independent finance companies and not wholly owned subsidiaries such as GMAC. They further

argue that GMAC finances the floor plan through conditional sales contracts, thereby vesting title in GMAC prior to sale of the vehicle. Therefore, plaintiffs reason, GMAC meets the literal definition of distributor.

Initially, we reject plaintiffs' literal interpretation of "distributor." GMAC's use of a conditional sales contract, chattel mortgage or any other technical method to secure its loans cannot obscure the fact that it is merely taking a security interest in inventory. To hold that a finance company is a distributor of automobiles would hold the technical form above the substance of transaction. Our reading of the legislative history, moreover, compels us to agree with defendants' position. Although generally remedial legislation is interpreted broadly, we fail to see such a broad remedial purpose in this particular statute. The Report of the House Committee on Interstate Commerce makes clear that Congress was acutely aware that it was infringing on the freedom of contract. It, therefore, limited the purpose of the act to equalizing a "specific area of automotive distribution in which congressional committees have ascertained a present need for remedial legislation." 1956 U.S. Code Cong. & Ad. News 4596, 4601. The Report stressed that the act only applies to franchises in cars, trucks and stationwagons and does not apply to buses, motorcycles or tractors. Similarly, the act should not be stretched to cover finance companies, even when wholly owned by a manufacturer.

Both defendants move to dismiss Counts II, III, and IV, which set forth alleged violations of Sections One and Two of the Sherman Act and Section Seven of the Clayton Act. Defendants contend that Chumbley lacks standing and that these counts fail to state a claim. We agree that plaintiffs have not stated a claim and, therefore, we do not reach the standing issue. In Count III, plaintiffs do not allege that defendants have monopolized, attempted to monopolize or conspired to monopolize any product or service in commerce but rather that they are monopolizing a method of

doing business, to wit GMC franchised dealerships. Such an allegation, as a matter of law, fails to state a claim for violation of the Sherman Act § 2. *McElhenney Co.* v. *Western Auto Supply Co.*, 269 F.2d 332 (4th Cir. 1959). Count IV must clearly be dismissed. There is no allegation that GMC acquired another corporation. Section Seven of the Clayton Act was clearly never intended to bar a corporation from *creating* a wholly owned subsidiary, or other new corporations.

Defendants also argue that Count II does not state a claim for violation of Section One of the Sherman Act. They contend that plaintiffs have alleged nothing more than a substitution of one dealer for another and that this as a matter of law cannot be an unreasonable restraint of trade. *Fray Chevrolet Sales, Inc.* v. *General Motors Corp.*, 1976 CCH Trade Cas. ¶ 60,925 (6th Cir. June 11, 1976); *Ace Beer Distributors, Inc.* v. *Kohn, Inc.*, 318 F.2d 283 (6th Cir.) *cert. denied*, 375 U.S. 922 (1963). Plaintiffs concede that defendants have a right to select their own franchisees, but attempt to distinguish between the franchise and the dealership, which they contend consists of the tangible assets and goodwill. They contend that the defendants conspired to fix the price of the dealership. We fail to see the logic of plaintiffs' position. Plaintiffs concede that the dealership is worthless without the franchise. It is impossible to attack defendants' selection of the individual to purchase the dealership without attacking defendants' selection of its own franchisees. At most, plaintiffs have alleged that GMC and GMAC have wrongfully interfered in a contractual relationship, a common law tort. They have not alleged an unreasonable restraint of trade.

Nevertheless, we cannot agree with defendants' position that they have an absolute right to select their franchisees. While the termination of one dealer and replacement by another by itself does not violate the antitrust laws, it is clear that the method of franchising can violate the antitrust laws if it produces an unreasonable restraint of trade.

Intra-brand competition is as deserving of protection as inter-brand competition. *United States* v. *Topco, Associates,* 405 U.S. 596 (1972); *United States* v. *Arnold Schwinn & Co.,* 388 U.S. 365 (1967). Thus, even where restraints are claimed to be necessary for quality control, courts have struck down franchising methods which violate Section One. *Copper Liquor, Inc.* v. *Adolph Coors Co.,* 506 F.2d 934 (5th Cir. 1975); *Adolph Coors Co.* v. *F.T.C.,* 497 F.2d 1178 (10th Cir. 1974), *cert. denied,* 419 U.S. 1105 (1975).[1] Although plaintiffs have not specifically claimed that GMC's methods of franchising, such as the use of MHD as a holder of dealership voting stock, is an unreasonable restraint of trade, the thrust of the factual allegations may support such a position.[2] Complex issues in antitrust litigation do not lend themselves to summary disposition. *Poller* v. *Columbia Broadcasting,* 368 U.S. 464 (1962). Therefore, plaintiffs will be given an opportunity to amend their complaint to state with specificity what, if any, violation of 15 U.S.C. § 1 they intend to prove.

Defendants next contend that plaintiffs lack standing and fail to state a claim under 42 U.S.C. § 1982. Plaintiffs have acknowledged that they intended to allege a claim under § 1981, and defendants have acknowledged that they will not be prejudiced if plaintiffs amend their complaint. The allegation of a racially motivated termination clearly sets

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[1] We recognize that these cases were applying the doctrine of *United States* v. *Arnold, Schwinn & Co.,* 388 U.S. 365 (1967), which has been recently overruled. *Continental T.V., Inc.* v. *GTE Sylvania, Inc.,* —— U.S. ——, 45 U.S.L.W. 4828 (U.S. June 23, 1977). *Continental,* however, merely holds that vertical territorial restraints are not per se unreasonable restraints of trade. The opinion continues to recognize the importance of intra-brand competition and does not give a franchisor license to restrain trade among its franchisees in whatever manner it chooses.

[2] *See, e.g.,* Judge Will's characterization of a similar Chrysler plan in *Madsen* v. *Chrysler Corp.,* 261 F.Supp. 488, 499 (N.D. Ill. 1966), *vacated as moot,* 375 F.2d 773 (7th Cir. 1967).

forth a claim under § 1981. *McDonald* v. *Santa Fe Trail Transportation Corp.*, 44 U.S.L.W. 5067 (U.S. June 25, 1976). Therefore, plaintiffs will be permitted to amend their complaint to substitute § 1981 for § 1982. Defendant GMAC has also moved to dismiss this count, but plaintiffs have admitted that this claim is only directed against GMC.

Finally, defendant GMAC moves to dismiss Count VI, the state cause of action for breach of fiduciary duty by GMC as majority shareholder of Chumbley Chevrolet. Plaintiffs have admitted that this count is directed only against GMC and GMC has specifically not joined in GMAC's motion. The motion is, therefore, moot. The court must, however, dismiss Count VI for lack of jurisdiction. The corporate plaintiff and both defendants are Delaware corporations; therefore, the court does not have jurisdiction under 28 U.S.C. § 1332. The court also finds that it does not have pendant jurisdiction. All federal claims deal with the external relationships between Chumbley Chevrolet and GMC and GMAC. Count VI, however, deals solely with the internal operations of Chumbley Chevrolet.

Accordingly, It Is Ordered that defendant GMAC's motion to dismiss Counts I, III, IV, V, and VI be and the same hereby is granted;

It Is Further Ordered that defendant GMAC's motion to dismiss Count II be and the same hereby is denied;

It Is Further Ordered that defendant GMC's motion to dismiss Counts III and IV be and the same hereby is granted;

It Is Further Ordered that defendant GMC's motion to dismiss Counts II and V be and the same hereby is denied;

It Is Further Ordered that Count VI be and the same hereby is dismissed for lack of jurisdiction over the subject matter;

IT IS FURTHER ORDERED that plaintiffs shall, within 45 days from the date of this order file an amended complaint setting forth with specificity what plaintiffs contend to be violations of the Sherman Act and substituting § 1981 for § 1982, if plaintiffs wish to proceed with Count V.

/s/ ROBERT E. DEMASCIO
Robert E. DeMascio
United States District Judge

Dated: September 19, 1977.

Pursuant to Rule 77(d), Fed.R.Civ.P., copies mailed to attorneys for all.